

In the Supreme Court of the United States

SANTIAGO PINEDA,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION

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February 1, 2023

**CAPITAL CASE
QUESTION PRESENTED**

Whether a California jury that has already found unanimously and beyond a reasonable doubt that the defendant committed first degree murder under special circumstances that render him eligible for the death penalty must also, in order to return a constitutional penalty verdict of death, find beyond a reasonable doubt that aggravating circumstances outweigh the mitigating circumstances.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Pineda, No. S150509 (June 27, 2022) (this case below) (entering judgment).

In re Pineda, No. S274838 (state collateral review) (pending).

California Superior Court, Los Angeles County:

People v. Pineda, No. NA061271 (February 15, 2007) (this case below) (entering judgment).

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STATEMENT

1. In March 2002, petitioner Santiago Pineda and his neighbor and 18-year old friend Raul Tinajero met Rafael Sanchez while drinking outside a home. Pet. App. 2-3.¹ Sanchez offered to drive them to Long Beach to “pick up some girls” in his Infiniti. *Id.* at 3. On the way, Sanchez stepped out of his car to urinate in an alley, and Pineda drove off with the car. *Id.* Later that night, Sanchez drove to Pineda’s home in another car, a Honda, and confronted Pineda about the theft of the Infiniti. *Id.* Promising to help Sanchez retrieve his car, Pineda entered the Honda, along with Tinajero, and directed Sanchez to drive to an alley. *Id.* at 3-4. There, Pineda strangled Sanchez to the point of unconsciousness, pushed him out the car, ran back and forth over Sanchez with the Honda several times, and then drove home. *Id.* at 4. Once home, Pineda switched into the Infiniti with Tinajero as a passenger, and returned to Sanchez’s location in the alley to “go check it out.” *Id.* There, Pineda ran over Sanchez again at high speed. *Id.* at 4, 6, 8, 20. Sanchez died from internal bleeding and crushing injuries to his vital organs. *Id.* at 8.

Pineda was charged with the murder of Sanchez. Pet. App. 9. Tinajero testified as a prosecution witness at Pineda’s trial. *Id.* After Tinajero’s testimony, a mistrial was declared due to the sudden illness of defense counsel. *Id.* at 2, 9. Before the retrial occurred, Pineda murdered Tinajero while they

¹ The page numbers correspond to the pagination appearing on the slip opinion issued by the California Supreme Court, which is reproduced as Appendix A in the Petition Appendix.

were both housed at the Los Angeles County Jail. *Id.* at 2, 9. Pineda used an elaborate ruse to leave his cell and enter Tinajero's cell. *Id.* at 2, 9, 11-13, 15, 20. There, as Tinajero's cellmates later testified, Pineda pulled Tinajero off his bunk, held the struggling Tinajero in a headlock for several minutes until he stopped moving, dunked Tinajero's head underwater in the toilet for a few minutes, threw Tinajero's body on the floor, stomped on Tinajero's chest and neck, and tied a ligature around Tinajero's neck, before putting Tinajero's body back on the bunk, and covering him with a sheet. *Id.* at 10-12, 15. An autopsy confirmed that Tinajero died from asphyxia. *Id.* at 14.

Pineda was charged with the murders of both Sanchez and Tinajero, with the special circumstances of murder in the commission of robbery (regarding Sanchez), murder of a witness to prevent testimony (regarding Tinajero), and multiple murder. Pet. App. 1; *see* Cal. Penal Code §§ 187(a), 190.2(a)(3), (10), (17)(A). A jury convicted Pineda of two counts of first degree murder and unanimously found all three special circumstance allegations true beyond a reasonable doubt, thereby qualifying him for the death penalty. Pet. App. 1, *see* Cal. Penal Code § 190.2.

At the penalty phase of the trial, the trial court instructed the jurors that in deciding whether Pineda should be punished by death or life in prison without parole, they were to "consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances"; that the "weighing of aggravating and mitigating circumstances does not mean a mere

mechanical counting of factors on each side of an imaginary scale”; that they were “free to assign whatever moral or sympathetic value you deem appropriate to each and all of the various factors”; and that to “return a judgment of death, each of you must be persuaded that the aggravating circumstances are so substantial in comparison with the mitigating circumstances that it warrants death instead of life without parole.” 6 Clerk’s Transcript (CT) 1428. Consistent with state law, the trial court also instructed that no juror could consider evidence of Pineda’s prior conviction or violent conduct in aggravation unless the juror was satisfied beyond a reasonable doubt that Pineda was convicted of that crime or committed the unadjudicated criminal acts. 6 CT 1426-1427. The jury returned verdicts of death for the two murders, and the trial court sentenced Pineda to death on both counts. Pet. App. 1, 25.

2. On direct appeal, the California Supreme Court affirmed Pineda’s conviction and death sentence. Pet. App. 1, 111. As relevant here, the court “adhere[d] to [its] earlier precedents holding that . . . the death penalty statute does not violate the United States Constitution insofar as it does not require findings made beyond a reasonable doubt regarding the existence of specific aggravating factors (other than section 190.3, factors (b) and (c)), that aggravating factors outweigh mitigating factors, or that death is the

appropriate sentence.” *Id.* at 106.² Justice Liu concurred in the judgment, addressing an issue different from the one presented by Pineda in this petition. *People v. Pineda*, 13 Cal. 5th 186, 261 (2022) (Liu, J., concurring).³

ARGUMENT

Pineda argues that California’s death penalty system violated his rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments because state law does not require the penalty-phase jury to find beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors. Pet. 10-19. This Court has repeatedly denied review in cases presenting the same or similar questions, and there is no reason for a different result here.⁴

² Factors (b) and (c) refer to the presence or absence of prior violent criminal activity by the defendant, and of prior felony convictions of the defendant. Cal. Penal Code § 190.3(b), (c).

³ Because not all of the pages in the appendix are consecutively numbered, the citation to Justice Liu’s concurrence is to the California Reporter.

⁴ *See, e.g., Mataele v. California*, 2023 WL 350042 (2023) (No. 22-6088); *Bracamontes v. California*, 2023 WL 192039 (2023) (No. 22-6071); *Poore v. California*, 2022 WL 17408219 (2022) (No. 22-5695); *Gonzalez v. California*, 142 S. Ct. 2719 (2022) (No. 21-7296); *Scully v. California*, 142 S. Ct. 1153 (2022) (No. 21-6669); *Johnsen v. California*, 142 S. Ct. 353 (2021) (No. 21-5012); *Vargas v. California*, 141 S. Ct. 1411 (2021) (No. 20-6633); *Caro v. California*, 140 S. Ct. 2682 (2020) (No. 19-7649); *Mitchell v. California*, 140 S. Ct. 2535 (2020) (No. 19-7429); *Capers v. California*, 140 S. Ct. 2532 (2020) (No. 19-7379); *Erskine v. California*, 140 S. Ct. 602 (2019) (No. 19-6235); *Mendez v. California*, 140 S. Ct. 471 (2019) (No. 19-5933); *Bell v. California*, 140 S. Ct. 294 (2019) (No. 19-5394); *Gomez v. California*, 140 S. Ct. 120 (2019) (No. 18-9698); *Case v. California*, 139 S. Ct. 1342 (2019) (No. 18-7457); *Penunuri v. California*, 139 S. Ct. 644 (2018) (No. 18-6262); *Henriquez v. California*, 139 S. Ct. 261 (2018) (No. 18-5375); *Wall v. California*, 139 S. Ct. 187 (2018) (No. 17-

1. A California death sentence depends on a two-stage process prescribed by California Penal Code sections 190.1 through 190.9. At the first stage, the guilt phase, the jury initially determines whether the defendant committed first degree murder. Under California law, that crime carries three potential penalties: a prison term of 25 years to life with the possibility of parole, a prison term of life without the possibility of parole, or death. Cal. Penal Code § 190(a). The default sentence is a prison term of 25 years to life. The penalties of death or life without parole may be imposed only if, in addition to finding the defendant guilty of first degree murder, the jury also finds true one or more statutorily enumerated special circumstances. *Id.* §§ 190.2(a), 190.4. The jury’s findings on these special circumstances are also made during the guilt phase of a capital defendant’s trial, and a “true” finding must be unanimous and beyond a reasonable doubt. *Id.* §§ 190.4(a), (b).

9525); *Brooks v. California*, 138 S. Ct. 516 (2017) (No. 17-6237); *Becerrada v. California*, 138 S. Ct. 242 (2017) (No. 17-5287); *Thompson v. California*, 138 S. Ct. 201 (2017) (No. 17-5069); *Landry v. California*, 138 S. Ct. 79 (2017) (No. 16-9001); *Mickel v. California*, 137 S. Ct. 2214 (2017) (No. 16-7840); *Jackson v. California*, 137 S. Ct. 1440 (2017) (No. 16-7744); *Rangel v. California*, 137 S. Ct. 623 (2017) (No. 16-5912); *Johnson v. California*, 577 U.S. 1158 (2016) (No. 15-7509); *Cunningham v. California*, 577 U.S. 1123 (2016) (No. 15-7177); *Lucas v. California*, 575 U.S. 1041 (2015) (No. 14-9137); *Boyce v. California*, 574 U.S. 1169 (2015) (No. 14-7581); *DeBose v. California*, 574 U.S. 1051 (2014) (No. 14-6617); *Blacksher v. California*, 565 U.S. 1209 (2012) (No. 11-7741); *Taylor v. California*, 562 U.S. 1013 (2010) (No. 10-6299); *Bramit v. California*, 558 U.S. 1031 (2009) (No. 09-6735); *Morgan v. California*, 552 U.S. 1286 (2008) (No. 07-9024); *Cook v. California*, 552 U.S. 976 (2007) (No. 07-5690); *Huggins v. California*, 549 U.S. 998 (2006) (No. 06-6060); *Harrison v. California*, 546 U.S. 890 (2005) (No. 05-5232); *Smith v. California*, 540 U.S. 1163 (2004) (No. 03-6862); *Prieto v. California*, 540 U.S. 1008 (2003) (No. 03-6422).

During the guilt phase of Pineda’s trial, the jury found him guilty of two counts of first degree murder and found the special circumstances to be true—that Pineda murdered Sanchez while he was engaged in robbery; that he murdered Tinajero, a witness, to prevent Tinajero from testifying; and that he was convicted of two murders in this proceeding. Pet. App. 1. The jury’s findings were unanimous and made under the beyond-a-reasonable-doubt standard. 5 CT 1271-1272; 6 CT 1305, 1307.

The second stage of California’s death penalty trial process, the penalty phase, proceeds under California Penal Code section 190.3. During the penalty phase, the jury hears evidence which it is allowed to consider “as to any matter relevant to aggravation, mitigation, and sentence, including but not limited to” certain specified topics. Cal. Penal Code § 190.3. “In determining the penalty,” the jury must “take into account any” of a list of specified factors “if relevant”—including “[t]he circumstances of the crime of which the defendant was convicted . . .” and “[a]ny . . . circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.” *Id.* The jury need not agree unanimously on the existence of a particular aggravating circumstance, nor must it find the existence of such a circumstance beyond a reasonable doubt (with the exception of prior unadjudicated violent criminal activity and prior felony convictions). *See People v. Romero*, 62 Cal. 4th 1, 56 (2015); *People v. Gonzales*, 52 Cal. 4th 254, 328 (2011). If the jury “concludes that the aggravating circumstances outweigh the mitigating circumstances,” then it

“shall impose a sentence of death.” Cal. Penal Code § 190.3. If it “determines that the mitigating circumstances outweigh the aggravating circumstances,” then it “shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.” *Id.*

2. Pineda contends California’s capital sentencing statute is unconstitutional because it does not require a jury in the penalty phase to find that the aggravating factors outweigh the mitigating factors beyond a reasonable doubt. Pet. 10-19. But the Constitution imposes no such requirement. In support of his contention, Pineda relies primarily on the Sixth and Fourteenth Amendment rule that “[i]f a State makes an increase in a defendant’s authorized punishment contingent on the finding of a fact, that fact—no matter how the State labels it—must be found by a jury beyond a reasonable doubt.” *Ring v. Arizona*, 536 U.S. 584, 602 (2002) (applying rule to Arizona death penalty); *see also Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); Pet. 10-17. California law is consistent with this rule because once a jury finds unanimously and beyond a reasonable doubt that a defendant has committed first degree murder with a special circumstance, the maximum potential penalty prescribed by statute is death. *See People v. Prince*, 40 Cal. 4th 1179, 1297-1298 (2007); *see generally Tuilaepa v. California*, 512 U.S. 967, 971-972 (1994) (“To render a defendant eligible for the death penalty in a homicide case, we have indicated that the trier of fact must convict the defendant of murder and find one ‘aggravating circumstance’ (or its equivalent)

at either the guilt or penalty phase”). Thus, imposing that maximum penalty on a defendant once these jury determinations have been made unanimously and beyond a reasonable doubt does not violate the Constitution.

In arguing to the contrary, Pineda cites *Hurst v. Florida*, 577 U.S. 92, 94-95, 98, 100 (2016). Pet. 10-11, 13, 17. Under the Florida system considered in *Hurst*, after a jury verdict of first degree murder, a convicted defendant was not “eligible for death,” 577 U.S. at 99-100, unless the judge further determined that an enumerated “aggravating circumstance[] exist[ed],” Fla. Stat. § 921.141(3). The judge was thus tasked with making the “findings upon which the sentence of death [was] based,” 577 U.S. at 96 (quoting Fla. Stat. § 921.141(3))—determinations that were essentially questions of fact, *see* Fla. Stat. § 921.141(5) (listing aggravating circumstances, such as whether the crime was committed with a purpose of pecuniary gain). This Court held that Florida’s system suffered from the same constitutional flaw that Arizona’s had in *Ring*: “The maximum punishment” a defendant could receive without judge-made findings “was life in prison without parole,” and the judge “increased” that punishment “based on [the judge’s] own factfinding.” *Hurst*, 577 U.S. at 99.

In contrast, under California law a defendant is eligible for a death sentence only after the jury finds true at least one of the special circumstances in California Penal Code Section 190.2(a). *See McKinney v. Arizona*, 140 S. Ct. 702, 707-708 (2020) (“Under *Ring* and *Hurst*, a jury must find the aggravating

circumstance that makes the defendant death eligible”). That determination, which the jury must agree on unanimously and beyond a reasonable doubt, is part of how California fulfills the “constitutionally necessary function” of “circumscrib[ing] the class of persons eligible for the death penalty.” *Zant v. Stephens*, 462 U.S. 862, 878 (1983).

The jury’s subsequent consideration of aggravating and mitigating factors at the penalty phase fulfills a different function: that of providing an “individualized determination . . . at the selection stage” of who among the eligible defendants deserves the death penalty. *Zant*, 462 U.S. at 879; see *People v. Moon*, 37 Cal. 4th 1, 40 (2005) (“The penalty jury’s principal task is the moral endeavor of deciding whether the death sentence should be imposed on a defendant who has already been determined to be ‘death eligible’ as a result of the findings and verdict reached at the guilt phase.”). Such a determination involves a choice between a greater or lesser authorized penalty—not any increase in the maximum potential penalty. See *Jones v. United States*, 526 U.S. 227, 249 (1999).

Kansas v. Carr, 577 U.S. 108 (2016) effectively forecloses any argument that determinations concerning the weight of aggravating and mitigating factors at the penalty selection phase must be made beyond a reasonable doubt. As *Carr* reasoned, it is possible to apply a standard of proof to the “eligibility phase” of a capital sentencing proceeding, “because that is a purely factual determination.” *Id.* at 119. In contrast, it is doubtful whether it would even

be “possible to apply a standard of proof to the mitigating-factor determination (the so-called ‘selection phase’ of a capital-sentencing proceeding),” because “[w]hether mitigation exists . . . is largely a judgment call (or perhaps a value call); what one juror might consider mitigating another might not.” *Id.*; *see, e.g., People v. Brown*, 46 Cal. 3d 432, 456 (1988) (California’s sentencing factor regarding “[t]he age of the defendant at the time of the crime” may be either a mitigating or an aggravating factor in the same case: the defendant may argue for age-based mitigation, and the prosecutor may argue for aggravation because the defendant was “old enough to know better”).

This Court further observed that “the ultimate question [of] whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy,” and “[i]t would mean nothing . . . to tell the jury that the defendants must deserve mercy beyond a reasonable doubt.” *Carr*, 577 U.S. at 119. That reasoning leaves no room for Pineda’s argument that the Constitution requires a capital sentencing jury to determine the relative weight of aggravating and mitigating factors beyond a reasonable doubt.⁵

⁵ Pineda asserts that California is an “outlier” in that it does not require that aggravating factors be proved beyond a reasonable doubt. Pet. 18-19. But the question presented raises a constitutional claim about how a California jury weighs aggravation versus mitigation, not a challenge to how aggravating factors are proved. *See* Pet. ii, 12-17. In any event, this Court has repeatedly denied many previous petitions that have asserted that California’s system is unconstitutional because it does not impose a beyond-a-reasonable-doubt standard for all penalty-phase aggravating factors. *See supra* n.4. As explained above, a California jury’s separate finding of a special circumstance, unanimously and beyond a reasonable doubt, satisfies *Apprendi*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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